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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)  
47237-5005-00-US

First named inventor: Kengo AKIMOTO et al.

Application No.: 10/550,711

Art Unit: 1621

Filed: September 26, 2005

Examiner: Deborah D. Carr

Title: LIPID-IMPROVING AGENT AND COMPOSITION CONTAINING LIPID-IMPROVING AGENT

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

- ☐ Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☒ Other than small entity - fee \$ 1540.00 (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form of Petition for Extension of Time, Amendment and Response, IDS (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_.
- ☒ is enclosed herewith.

06/09/2008 SZENDIE1 00000044 10550711

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_

- ☐ has been paid previously on 01 FC:1453
- ☐ is enclosed herewith.

1540.00

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

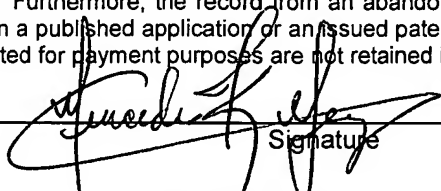
☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

  
\_\_\_\_\_  
Signature

Mercedes K. Meyer, Ph.D., Esq.

\_\_\_\_\_  
Typed or printed name

DRINKER BIDDLE & REATH LLP

\_\_\_\_\_  
Address

1500 K Street, NW, Washington, DC 20005

\_\_\_\_\_  
Address

6-6-08

\_\_\_\_\_  
Date

44,939

\_\_\_\_\_  
Registration Number, if applicable

202-842-8800

\_\_\_\_\_  
Telephone Number

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: Copy of Amendment/Petition for Extension of Time/IDS filed 4/4/08

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name of person signing certificate



PATENT  
ATTORNEY DOCKET NO.: 47231-5005-00-US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	) Confirmation No.: 3090
	)
Kengo AKIMOTO et al.	) Examiner: Deborah D. Carr
	)
Application No.: 10/550,711	) Group Art Unit: 1621
	)
Filed: September 26, 2005	)
	)
For: LIPID-IMPROVING AGENT AND COMPOSITION CONTAINING LIPID- IMPROVING AGENT	

**STATEMENT TO ACCOMPANY PETITION FOR REVIVAL OF AN APPLICATION  
FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

**MAIL STOP: PETITIONS**

Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Window, Randolph Building  
Alexandria, VA 22314

Sir:

This Statement accompanies a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b). Applicants are in receipt of the Notice of Abandonment dated May 30, 2008.

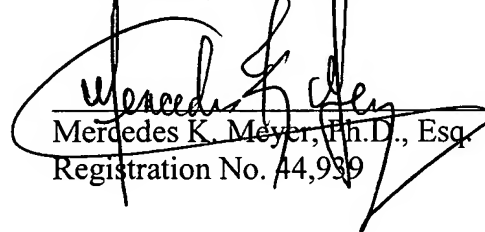
It is submitted that Applicants filed with the U.S. Patent and Trademark Office on April 4, 2008, an Amendment and Response Under 37.C.F.R. §1.111, a Petition for a three-month extension of time, and an Information Disclosure Statement in the above-identified application (copies attached including date stamped receipt card and proof of payment of the fee for extension of time). However, the documents submitted consistently, although erroneously, referred to Application No. 10/550,771, rather than Application No. 10/550,711 (the present application), on the first page of all documents submitted. Subsequent pages, if any, correctly identified the application as Application No. 10/550,711. All other identifying information was

correct as submitted. It is also noted that Mr. J. Chase from the U.S. Patent and Trademark Office, Petitions Office (571-272-3282) has indicated that the documents scanned in PAIR have now been transferred successfully to the present application.

It is therefore respectfully submitted that the abandonment of the present application was entirely unintentional as the papers were timely filed but contained a clerical error. It is requested that this Petition be granted and the Notice of Abandonment be rescinded in the above-identified application. Should the Office have any questions or require any further information in this matter, the Office is respectfully requested to contact the undersigned.

Dated: June 6, 2008

Respectfully submitted,  
**DRINKER, BIDDLE & REATH LLP**

  
Mercedes K. Meyer, Ph.D., Esq.  
Registration No. 44,989

**CUSTOMER NO. 055694**  
**DRINKER, BIDDLE & REATH LLP**  
1500 K Street, N.W., Suite 1100  
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Tel: (202) 842-8800  
Fax: (202)-204-0289



Donker Biddle & Reach LLP

Suite 1100  
1500 K Street, N.W.  
Washington, DC 20005-1209  
202-842-8800 Phone  
202-842-8465/66 Fax

The official date stamp of the United States Patent and Trademark Office hereon is acknowledgment of the filing of:

**I. Application**

- ☐ A. New Application  
☐ Provisional  
☐ Utility  
☐ Design  
☐ Plant  
☐ B. Continuation/Divisional/Continuation-In-Part  
☐ § 1.53(b)  
☐ § 1.53 (f) – fee not included  
☐ C. Specification: \_\_\_\_\_ Sheet(s)  
☐ D. \_\_\_\_\_ Claim(s)  
☐ E. \_\_\_\_\_ Drawing(s)  
☐ Formal  
☐ Informal  
☐ F. Small Entity  
☐ G. Combined Declaration & Power of Attorney

**II. Prosecution Documents**

- ☐ A. Request for Correction of Official Filing Receipt  
☒ B. Response to Office Action  
☒ 3 Month Extension of Time  
☐ C. Claim to Priority & Priority Document(s)  
☒ D. Information Disclosure Statement  
☒ PTO Form 1449 – 1 page(s)  
☒ 3 Prior Art Reference(s)  
☐ E. Issue Fee  
☐ Form PTOL-85  
☐ Request for \_\_\_\_\_ Soft Copies  
☐ F. Formal Drawing(s): \_\_\_\_\_ Sheet(s)

**III. Post Issuance**

- ☐ A. \_\_\_\_\_ Maintenance Fee  
☐ B. Request for Correction of Letters Patent

**IV. Recordation**

- ☐ A. Assignment Agreement (Number of Patents Covered: \_\_\_\_\_)  
☐ B. Security Interest Agreement (Number of Patents Covered: \_\_\_\_\_)  
☐ C. Change of Name, Merger or Other Transfer Document (Number of Patents Covered: \_\_\_\_\_)  
☐ D. PTO Recordation Form Cover Sheet

**VI. Payment**

- ☒ Check No. 40704 for \$1230.00  
☐ Deposit Account No. \_\_\_\_\_ for \$ \_\_\_\_\_

**VII. Other**

- ☐ A. Transmittal Letter  
☐ B. Power of Attorney  
☐ C. Appointment of Domestic Representative  
☐ D. Change of Correspondent's Address  
☐ E.

COPY



Date: April 4, 2008  
Client No.: 47237  
File No.: 5005/00US  
Matter No.: 216114  
Title: LIPID-IMPROVING AGENT AND COMPOSITION CONTAINING LIPID-IMPROVING AGENT  
Inventor(s): Kengo AKIMOTO et al.  
Serial/Patent. No. 10/550,771  
Attorney: Mercedes K. Meyer, Ph.D., Esq.  
Secretary: Tina M. Fluharty

4/4/08

40704

DIRECTOR OF THE US PATENT & TRADEMARK OFFICE

04-04-08

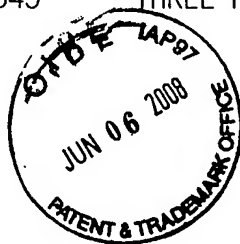
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PTO/SB/22  
OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

<b>PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)</b>		Docket Number (Optional) 47237-5005-00-US	
In re application of: Kengo AKIMOTO et al.			
Application No. 10/550,771		Filed September 26, 2005	
For: LIPID-IMPROVING AGENT AND COMPOSITION CONTAINING LIPID-IMPROVING AGENT			
Art Unit: 1621		Examiner: Deborah D. Carr	
This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application.			
<b>COPY</b>			
The requested extension and appropriate non-small- <del>entity</del> fee are as follows (check time period desired):			
		Large Entity	Small Entity
	One month (37 CFR 1.17(a)(1))	\$ 120	\$ 60
	Two months (37 CFR 1.17(a)(2))	\$ 460	\$ 230
XX	Three months (37 CFR 1.17(a)(3))	\$1050	\$ 525
	Four months (37 CFR 1.17(a)(4))	\$1640	\$ 820
	Five months (37 CFR 1.17(a)(5))	\$2230	\$1115
	Applicant claims small entity status. See 37 CFR 1.27.		
X	A check in the amount of the fee is enclosed.		
	Payment by credit card. Form PTO-2038 is attached.		
	The Director has already been authorized to charge fees in this application to a Deposit Account.		
X	The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-0573. A copy of this sheet is enclosed.		
I am the			
	Applicant/inventor		
	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).		
	X	attorney or agent of record.	
	Attorney or agent of record under 37 CFR 1.34(a). Registration number if acting under 37 CFR 1.34(a):		
<b>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</b>			
Signature			
Typed Name	Mercedes K. Meyer, Ph.D., Esq.	Registration No.	44,939
Date	April 4, 2008		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
X	Total of one (1) forms are submitted.		



PATENT  
ATTORNEY DOCKET NO.: 47231-5005-00-US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Kengo AKIMOTO et al.

Application No.: 10/550,771

Filed: September 26, 2005

For: LIPID-IMPROVING AGENT AND COMPOSITION CONTAINING LIPID-  
IMPROVING AGENT

) Confirmation No.: 3090  
)  
) Examiner: Deborah D. Carr  
)  
) Group Art Unit: 1621  
)  
)  
)

**MAIL STOP: AMENDMENT**  
Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Window, Randolph Building  
Alexandria, VA 22314

**COPY**

Sir:

**AMENDMENT AND RESPONSE UNDER 37 C.F.R. § 1.111**

In response to the Office Action mailed October 4, 2007, the Office is respectfully requested to consider and enter the following amendments to the instant application. A Petition for a three-month extension of time, extending the period of response until April 4, 2008 is attached hereto.

**Amendments to the Specification** being on page 2.

**Amendments to the Claims** begin on page 3.

**Remarks** begin on page 11.



**IN THE SPECIFICATION:**

On page 1, line 5 (before "Industrial Field") please insert the following:

**Cross Reference to Related Applications**

This application is a national stage of PCT/JP2004/004282 filed March 26, 2004, and claims benefit of Japanese Application No. 2003-088631 filed March 27, 2003.

**IN THE CLAIMS:**

Please amend the claims as follows:

Claim 1 (Currently Amended): A liquid-improving agent containing a triglyceride(s) where a poly-unsaturated fatty acid is bonded to 2-position of the triglyceride(s), wherein,

- (1) the poly-unsaturated fatty acid is an omega-9 type unsaturated fatty acid;
- (2) the poly-unsaturated fatty acid is an omega-6 type unsaturated fatty acid selected from the group consisting of 9,12-octadecadienoic acid (linolenic acid) 18:2 $\omega$ 6, 6,9,12-octadecatrienoic acid ( $\gamma$ -linolenic acid) 18:3 $\omega$ 6, 8,11,14-eicosatrienoic acid (dihomo- $\gamma$ -linolenic acid) 20:3 $\omega$ 6, 5,8,11,14-eicosatrienoic acid (arachidonic acid) 20:4 $\omega$ 6, 7,10,13,16-docosatetraenoic acid 22:4 $\omega$ 6, and 4,7,10,13,16-docosapentaenoic acid 22:5 $\omega$ 6; or
- (3) the poly-unsaturated fatty acid is an omega-3 type unsaturated fatty acid selected from the group consisting of 9,12,15-octadecatrienoic acid ( $\alpha$ -linolenic acid) 18:3 $\omega$ 3, 6,9,12,15-octadecatetraenoic acid (stearidonic acid) 18:4 $\omega$ 3, 11,14,17-eicosatrienoic acid (dihomo- $\alpha$ -linolenic acid) 20:3 $\omega$ 3, 8,11,14,17-eicosatetraenoic acid 20:4 $\omega$ 3, and 7,10,13,16,19-docosapentaenoic acid 22:5 $\omega$ 3.

Claim 2 (Original): The lipid-improving agent according to claim 1, wherein the agent contains a triglyceride(s) where a poly-unsaturated fatty acid is bonded to 2-position and saturated fatty acid and/or mono-unsaturated fatty acid are/is bonded to 1,3-positions of the triglyceride(s).

Claims 3-10. (Canceled)

Claim 11 (Previously Presented): The lipid-improving agent according to claim 1, wherein the omega-9 type unsaturated fatty acid is 6,9-octadecadienoic acid 18:2 $\omega$ 9, 8,11-eicosadienoic acid 20:2 $\omega$ 9 or 5,8,11-eicosatrienoic acid (mead acid) 20:3 $\omega$ 9.

Claim 12 (Original): The lipid-improving agent according to claim 2, wherein the saturated fatty acid or the mono-unsaturated fatty acid is selected from octanoic acid (caprylic acid) 8:0, decanoic acid (capric acid) 10:0, dodecanoic acid (lauric acid) 12:0, tetradecanoic acid (myristic acid) 14:0, hexadecanoic acid (palmitic acid) 16:0, octadecanoic acid (stearic acid) 18:0, 9-octadecanoic acid (oleic acid) 18:1 $\omega$ 9, arachidic acid 20:0 and behenic acid 22:0 and the fatty acids bonding to 1- and 3-positions are same or combined.

Claim 13 (Currently Amended): The lipid-improving agent according to claim 1, wherein the triglyceride(s) is selected from 1,3-dipalmitoyl-2-arachidonoyl glyceride (16:0-20:4 $\omega$ 6-16:0), 1,3-dipalmitoyl-2-5,8,11,14,17-eicosapentanoyl glyceride (16:0-20:5 $\omega$ 3-16:0), 1,3-dipalmitoyl-2-4,7,10,13,16,19-docosahexanoyl glyceride (16:0-22:6 $\omega$ 3-16:0), 1,3-dipalmitoyl-2-dihomo- $\gamma$ -linolenoyl glyceride (16:0-20:3 $\omega$ 6-16:0), 1,3-dipalmitoyl-2-meadnoyl glyceride (16:0-20:3 $\omega$ 9-16:0), ~~1,3-dicapryloyl-2-arachidonoyl glyceride (8:0-20:4 $\omega$ 6-8:0), 1,3-dicapryloyl-2-5,8,11,14,17-eicosapentanoyl glyceride (8:0-20:5 $\omega$ 3-8:0), 1,3-dicapryloyl-2-4,7,10,13,16,19-docosahexanoyl glyceride (8:0-22:6 $\omega$ 3-8:0), 1,3-dicapryloyl-2-dihomo- $\gamma$ -linolenoyl glyceride (8:0-20:3 $\omega$ 6-8:0), 1,3-dicapryloyl-2-meadnoyl glyceride (8:0-20:3 $\omega$ 9-8:0), 1,3-dioleoyl-2-arachidonoyl glyceride (18:1 $\omega$ 9-20:4 $\omega$ 6-18:1 $\omega$ 9), 1,3-dioleoyl-2-5,8,11,14,17-eicosapentanoyl glyceride (18:1 $\omega$ 9-20:5 $\omega$ 3-18:1 $\omega$ 9), 1,3-oleoyl-2-4,7,10,13,16,19-docosahexanoyl glyceride (18:1 $\omega$ 9-22:6 $\omega$ 3-18:1 $\omega$ 9), 1,3-dioleoyl-2-dihomo- $\gamma$ -linolenoyl glyceride (18:1 $\omega$ 9-20:3 $\omega$ 6-18:1 $\omega$ 9) and/or 1,3-dioleoyl-2-meadnoyl glyceride (18:1 $\omega$ 9-20:3 $\omega$ 9-18:1 $\omega$ 9).~~

Claim 14 (Original): The lipid-improving agent according to claim 1, wherein it lowers neutral fat (triglyceride(s)) and/or cholesterol in blood.

Claim 15 (Original): The lipid-improving agent according to claim 1, wherein it increases HDL-cholesterol in blood.

Claim 16 (Original): The lipid-improving agent according to claim 1, wherein it burns stored fat.

Claim 17 (Original): The lipid-improving agent according to claim 1, wherein it burns edible fat.

Claim 18 (Original): The lipid-improving agent according to claim 1, wherein it is mediated by a transcription factor of an intranuclear receptor type (PPAR).

Claim 19 (Previously Presented): The lipid-improving agent according to claim 1, wherein the PPAR is PPAR $\alpha$  of liver and enhances PPAR $\alpha$  and/or related gene expression.

Claim 20 (Previously Presented): The lipid-improving agent according to claim 1, wherein the related gene is hepatic  $\beta$ -oxidation gene.

Claim 21 (Previously Presented): The lipid-improving agent according to claim 1, wherein the PPAR is a PPAR $\gamma$  of fat tissue and suppresses PPAR $\gamma$  and/or related gene expression.

Claim 22 (Currently Amended): A composition having a lipid-improving action which contains a triglyceride(s) where a poly-unsaturated fatty acid is bonded to 2-position of the triglyceride(s), wherein.

- (1) the poly-unsaturated fatty acid is an omega-9 type unsaturated fatty acid;
- (2) the poly-unsaturated fatty acid is an omega-6 type unsaturated fatty acid selected from the group consisting of 9,12-octadecadienoic acid (linolenic acid) 18:2 $\omega$ 6, 6,9,12-octadecatrienoic acid ( $\gamma$ -linolenic acid) 18:3 $\omega$ 6, 8,11,14-eicosatrienoic acid (dihomo- $\gamma$ -linolenic acid) 20:3 $\omega$ 6, 5,8,11,14-eicosatrienoic acid (arachidonic acid) 20:4 $\omega$ 6, 7,10,13,16-docosatetraenoic acid 22:4 $\omega$ 6 or 4,7,10,13,16-docosapentaenoic acid 22:5 $\omega$ 6; or
- (3) the poly-unsaturated fatty acid is an omega-3 type unsaturated fatty acid selected from the group consisting of 9,12,15-octadecatrienoic acid ( $\alpha$ -linolenic acid) 18:3 $\omega$ 3, 6,9,12,15-octadecatetraenoic acid (stearidonic acid) 18:4 $\omega$ 3, 11,14,17-eicosatrienoic acid (dihomo- $\alpha$ -linolenic acid) 20:3 $\omega$ 3, 8,11,14,17-eicosatetraenoic acid 20:4 $\omega$ 3, and 7,10,13,16,19-docosapentaenoic acid 22:5 $\omega$ 3.

Claim 23 (Original): The composition having a lipid-improving action according to claim 22, wherein the composition contains a triglyceride(s) where a poly-unsaturated fatty acid is bonded to 2-position and saturated fatty acid and/or mono-unsaturated fatty acid are/is bonded to 1,3-positions of the triglyceride(s).

Claims 24-31 (Canceled).

Claim 32 (Currently Amended): The composition according to claim ~~[[29]]~~ 22, wherein the omega-9 type unsaturated fatty acid is 6,9-octadecadienoic acid 18:2 $\omega$ 9, 8,11-eicosadienoic acid 20:2 $\omega$ 9 or 5,8,11-eicosatrienoic acid (mead acid) 20:3 $\omega$ 9.

Claim 33 (Original): The composition according to claim 23, wherein the saturated fatty acid or the mono-unsaturated fatty acid is selected from octanoic acid (caprylic acid) 8:0, decanoic acid (capric acid) 10:0, dodecanoic acid (lauric acid) 12:0, tetradecanoic acid (myristic acid) 14:0, hexadecanoic acid (palmitic acid) 16:0, octadecanoic acid (stearic acid) 18:0, 9-

octadecanoic acid (oleic acid) 18:1 $\omega$ 9, arachidic acid 20:0 and behenic acid 22:0 and the fatty acids bonding to 1- and 3-positions are same or combined.

Claim 34 (Currently Amended): The composition according to claim 22, wherein the triglyceride(s) is selected from 1,3-dipalmitoyl-2-arachidonoyl glyceride (16:0-20:4 $\omega$ 6-16:0), 1,3-dipalmitoyl-2-5,8,11,14,17-eicosapentanoyl glyceride (16:0-20:5 $\omega$ 3-16:0), 1,3-dipalmitoyl-2-4,7,10,13,16,19-docosahexanoyl glyceride (16:0-22:6 $\omega$ 3-16:0), 1,3-dipalmitoyl-2-dihomo- $\gamma$ -linolenoyl glyceride (16:0-20:3 $\omega$ 6-16:0), 1,3-dipalmitoyl-2-meadnoyl glyceride (16:0-20:3 $\omega$ 9-16:0), ~~1,3-dicapryloyl-2-arachidonoyl glyceride (8:0-20:4 $\omega$ 6-8:0), 1,3-dicapryloyl-2-5,8,11,14,17-eicosapentanoyl glyceride (8:0-20:5 $\omega$ 3-8:0), 1,3-dicapryloyl-2-4,7,10,13,16,19-docosahexanoyl glyceride (8:0-22:6 $\omega$ 3-8:0), 1,3-dicapryloyl-2-dihomo- $\gamma$ -linolenoyl glyceride (8:0-20:3 $\omega$ 6-8:0), 1,3-dicapryloyl-2-meadnoyl glyceride (8:0-20:3 $\omega$ 9-8:0), 1,3-dioleoyl-2-arachidonoyl glyceride (18:1 $\omega$ 9-20:4 $\omega$ 6-18:1 $\omega$ 9), 1,3-dioleoyl-2-5,8,11,14,17-eicosapentanoyl glyceride (18:1 $\omega$ 9-20:5 $\omega$ 3-18:1 $\omega$ 9), 1,3-oleoyl-2-4,7,10,13,16,19-docosahexanoyl glyceride (18:1 $\omega$ 9-22:6 $\omega$ 3-18:1 $\omega$ 9), 1,3-dioleoyl-2-dihomo- $\gamma$ -linolenoyl glyceride (18:1 $\omega$ 9-20:3 $\omega$ 6-18:1 $\omega$ 9) and/or 1,3-dioleoyl-2-meadnoyl glyceride (18:1 $\omega$ 9-20:3 $\omega$ 9-18:1 $\omega$ 9).~~

Claim 35 (Original): The composition according to claim 22, wherein it lower neutral fat (triglyceride(s)) and/or cholesterol in blood.

Claim 36 (Original): The composition according to claim 22, wherein it increases HDL-cholesterol in blood.

Claim 37 (Original): The composition according to claim 22, wherein it burns stored fat.

Claim 38 (Original): The composition according to claim 22, wherein it burns edible fat.

Claim 39 (Original): The composition according to claim 22, wherein it is mediated by a transcription factor of an intranuclear receptor type (PPAR).

Claim 40 (Previously Presented): The composition according to claim 22, wherein the PPAR is PPAR $\alpha$  of liver and enhances PPAR $\alpha$  and/or related gene expression.

Claim 41 (Previously Presented): The composition according to claim 22, wherein the related gene is hepatic  $\beta$ -oxidation gene.

Claim 42 (Previously Presented): The composition according to claim 22, wherein the PPAR is a PPAR $\gamma$  of fat tissue and suppresses PPAR $\gamma$  and/or related gene expression.

Claim 43 (Previously Presented): The composition according to claim 1, wherein it is a food composition or a pharmaceutical composition.

Claim 44 (Currently Amended): A food composition which contains a triglyceride(s) where a poly-unsaturated fatty acid is bonded to 2-position of the triglyceride(s) saturated fatty acid and/or mono-unsaturated fatty acid are/is bonded to 1,3-positions of the triglyceride(s) in such a manner that a daily ingested amount of the triglyceride(s) ~~where a poly-unsaturated fatty acid is bonded to 2-position of the triglyceride(s)~~ for an adult per day ~~[[in]]~~ is made 0.001 to 20 g in terms of the amount of the poly-unsaturated fatty acid.

Claim 45. (Canceled).

Claim 46 (Previously Presented): The composition according to claim 43, wherein the composition contains a triglyceride(s) where arachidonic acid is bonded to 2-position and saturated fatty acid and/or mono-unsaturated fatty acid are/is bonded to 1,3-positions of the triglyceride(s) in such a manner that a daily ingested amount of the triglyceride(s) where

arachidonic acid is bonded to 2-position and saturated fatty acid and/or mono-unsaturated fatty acid are/is bonded to 1,3-positions of the triglyceride(s) for an adult per day in made 0.001 to 20 g in terms of the amount of arachidonic acid.

Claim 47 (Previously Presented): The food composition according to claim 43, wherein the composition contains not less than 0.001% by weight of a composition in which the triglyceride(s) is selected from 1,3-dipalmitoyl-2-arachidonoyl glyceride (16:0-20:4 $\omega$ 6-16:0), 1,3-dipalmitoyl-2-5,8,11,14,17-eicosapentanoyl glyceride (16:0-20:5 $\omega$ 3-16:0), 1,3-dipalmitoyl-2-4,7,10,13,16,19-docosahexanoyl glyceride (16:0-22:6 $\omega$ 3-16:0), 1,3-dipalmitoyl-2-dihomo- $\gamma$ -linolenoyl glyceride (16:0-20:3 $\omega$ 6-16:0), 1,3-dipalmitoyl-2-meadnoyl glyceride (16:0-20:3 $\omega$ 9-16:0), 1,3-dicapryloyl-2-arachidonoyl glyceride (8:0-20:4 $\omega$ 6-8:0), 1,3-dicapryloyl-2-5,8,11,14,17-eicosapentanoyl glyceride (8:0-20:5 $\omega$ 3-8:0), 1,3-dicapryloyl-2-4,7,10,13,16,19-docosahexanoyl glyceride (8:0-22:6 $\omega$ 3-8:0), 1,3-dicapryloyl-2-dihomo- $\gamma$ -linolenoyl glyceride (8:0-20:3 $\omega$ 6-8:0), 1,3-dicapryloyl-2-meadnoyl glyceride (8:0-20:3 $\omega$ 9-8:0), 1,3-dioleoyl-2-arachidonoyl glyceride (18:1 $\omega$ 9-20:4 $\omega$ 6-18:1 $\omega$ 9), 1,3-dioleoyl-2-5,8,11,14,17-eicosapentanoyl glyceride (18:1 $\omega$ 9-20:5 $\omega$ 3-18:1 $\omega$ 9), 1,3-oleoyl-2-4,7,10,13,16,19-docosahexanoyl glyceride (18:1 $\omega$ 9-22:6 $\omega$ 3-18:1 $\omega$ 9), 1,3-dioleoyl-2-dihomo- $\gamma$ -linolenoyl glyceride (18:1 $\omega$ 9-20:3 $\omega$ 6-18:1 $\omega$ 9) and/or 1,3-dioleoyl-2-meadnoyl glyceride (18:1 $\omega$ 9-20:3 $\omega$ 9-18:1 $\omega$ 9).

Claim 48 (Previously Presented): The composition according to claim 43, wherein the food composition is functional food, nutritional supplement, designated health food or food for aged people.

Claim 49 (Original): A process for the production of a composition having a lipid-improving action which is a process for the production of a food composition, characterized in that, a triglyceride(s) where a poly-unsaturated fatty acid is bonded to 2-position and saturated fatty acid and/or mono-unsaturated fatty acid are/is bonded to 1,3-positions is compounded,



either solely or jointly, with a food material which does not substantially contains a triglyceride(s) where a poly-unsaturated fatty acid is bonded to 2-position and saturated fatty acid and/or mono-unsaturated fatty acid are/is bonded to 1,3-positions or, if contained, the amount is little.

## **REMARKS**

### **1. Status of the Claims**

Claims 1-49 stand pending. Claims 1-49 stand rejected.

After entry of the above amendments, claims 1, 2, 11-23, 32-44, and 46-49 stand pending; claims 3-10, 24-31, and 45 stand canceled. Claims 1, 13, 22, 32, 34, and 44 stand amended.

Support for the amendments to claims 1, 13, 22, 32, 34, and 44 can be found at least for example in the original claims. For example, the limitations of claims 3-10 in part are introduced in to claim 1, with claims 3-10 canceled. Similarly the limitations of claims 24-31 in part are introduced in to claim 22, and claims 24-31 stand canceled. Cancellation of and amendments to the claims have been made without prejudice to or disclaimer of the subject matter contained therein. Applicants reserve the right to file a continuation and/or divisional on any subject matter canceled by way of amendment.

### **2. Acknowledgement of Certified Priority Document**

Applicants note with appreciation the acknowledgement of receipt of the certified priority documents.

### **3. Acknowledgement of Information Disclosure Statement**

Applicants note with appreciation the acknowledgement of the Information Disclosure Statement filed September 26, 2005. Applicants submit herewith a new Information Disclosure Statement for consideration. Applicants respectfully request acknowledgement with the Office's next communication.

### **4. Rejection of the Claims Under 35 U.S.C. § 102(b)**

Claims 1-49 are rejected under 35 U.S.C. § 102(b) as being anticipated by (1) JP 2002-180082 or (2) WO 02/06505 or (3) Kawashima et al. or (4) Namal et al. or (5) Yoshida et al. or

(6) under 35 U.S.C. § 102(a) as being anticipated by WO 03/004667. The Office alleges that claims 2-21, 23-43, and 45-58 purportedly would "not contain any features which, in combination with the features of any claim to which they refer render them novel, as the features of these dependent claims have already been employed for the same purposes in similar compositions and processes...." The Office alleges the following with regard to each of the references:

- JP 2002-180082 (English Abstract only) allegedly discloses a structured lipid having an omega-3 fatty acid in the second position, its use in foods and for preparing a composition having a lipid improving action.
- WO 02/06505 (Abstract) allegedly discloses triglycerides with polyunsaturates in the sn-2 position and its use in foods.
- Kawashima et al. allegedly discloses the production of foods with lipid improving functions containing triglycerides with polyunsaturated fats in the sn-2 position and saturates in the sn1/3 positions (Abstract and page 611).
- Namal et al. allegedly discloses a food oil compositions which have lipid improving function containing triglycerides having omega 3 and omega 6 fatty acids in the sn-2 position (page 803).
- Yoshida et al., discloses food oil compositions from fish which have a lipid (improving function which comprises structured lipids having polyunsaturates in the sn-2 position (Abstract)
- WO 03/004667 allegedly discloses a triglyceride having a polyunsaturated fatty acid n the sn-2 position and its use in foods (Abstract).

See Office Action, pages 2-3.

Applicants traverse the rejection to the extent it is applied to the claims as presently amended. "Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claims". Jamesbury Corp. v. Litton Industrial Products, Inc., 225 U.S.P.Q. 253, 256 (Fed. Cir. 1985).

4.1 JP 2002-180082 [hereinafter the '082 application]

The '082 application describes the productions of a structural triglyceride having  $\omega$ 3-polyunsaturated fatty acid at position 2, and having middle chain fatty acids at positions 1 and 3, and the use thereof for treatment of some diseases or symptoms. However, the '082 application does not describe the triglycerides recited in the amended claims. Thus, the '082 application does not teach or suggest all the elements of the claims as amended. Accordingly, the rejection can be withdrawn in view of this reference.

4.2 Kawashima et al., JAOCS (2001)

Kawashima describes an enzymatic process for production of a structural lipid having  $\omega$ 3-polyunsaturated fatty acid at position 2 and having middle chain fatty acids at positions 1 and 3. The polyunsaturated fatty acids are docosahexanoic acid and eicosapentaenoic acid from fish oil and microbial produced arachidonic acid. Kawashima does not describe the triglycerides recited in the amended claims. Thus, Kawashima application does not teach or suggest all the elements of the claims as amended. Accordingly, the rejection can be withdrawn in view of Kawashima.

4.3 Sananayake et al., Lipids (2002)

All Sananayake describes is transesterification of oils such as borage oil, evening primrose oil, etc. so as to change positions of fatty acids on glyceride. The reference is thus irrelevant to the claims as amended. The rejection of the claims over this reference can also be withdrawn.

4.4 Yoshida et al., J. Nutr. Sci. Vitaminol. (1999)

Yoshida only describes that in natural seal oil, docosahexanoic acid and eicosapentaenoic acid are mainly positioned in triglyceride and are mainly positioned on position 2 in fish oil. Yoshida does not teach or suggest the presently claimed triglycerides. Accordingly, the rejection of the claims over this reference can also be withdrawn.

4.5 WO 02/06505

The PCT application describes a process for producing a structural lipid having polyunsaturated fatty acids (docosahexanoic acid, eicosapentaenoic acid, arachidonic acid) on position 2 and middle chain fatty acids on positions 1 and 3. The PCT application therefore does not teach or suggest the triglycerides of the amended claims. Thus, the rejection of the claims over this reference can be withdrawn.

4.6 WO 03/04667

This PCT application describes a process for producing a structural lipid having  $\omega$ 6-polyunsaturated fatty acid (ARA or DGLA) at position 2 and middle chain fatty acids on positions 1 and 3. This PCT application does not teach the triglycerides recited in the amended claims. Thus, the PCT application does not teach or suggest the amended claims. The rejection of the claims over this reference can also be withdrawn.

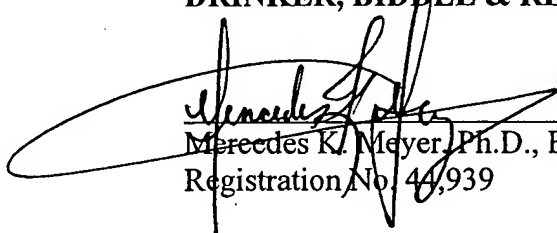
Therefore, none of the references teach or suggest all the limitations of the claims as amended. Accordingly, the rejection under §102(a) or (b) over these references can be withdrawn, and the claims allowed.

**CONCLUSION**

If there are any other fees due in connection with the filing of this Amendment, please charge the fees to our Deposit Account No. 50-0573. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested, and the fee should also be charged to our Deposit Account.

Respectfully submitted,  
**DRINKER, BIDDLE & REATH LLP**

Dated: April 4, 2008



Mercedes K. Meyer, Ph.D., Esq.  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kengo AKIMOTO et al. )

Confirmation No.: 3090

Application No.: 10/550,771 )

Group Art Unit: 1621

Filed: September 26, 2005 )

Examiner: Deborah D. Carr

For: LIPID-IMPROVING AGENT AND )  
COMPOSITION CONTAINING )  
LIPID-IMPROVING AGENT )

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Sir:

**INFORMATION DISCLOSURE STATEMENT (IDS)**

☐ **Under 37 C.F.R. § 1.97(b):** Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicant brings to the attention of the Examiner the documents listed on the attached PTO Form 1449. To the undersigned's knowledge, this IDS is being filed before the mailing date of a first Office Action on the merits, before the mailing date of a first Office Action on the merits after filing an RCE under § 1.114, or within three months of the application filing date.

☒ **Under 37 C.F.R. § 1.97(c):** Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), Applicant brings to the attention of the Examiner the documents listed on the attached PTO Form 1449. This IDS is being filed after the events recited in § 1.97(b) but, to the undersigned's knowledge, before the mailing date of a Final Office Action, a Notice of Allowance, or another action that closes prosecution in the application.

☒ The fee of \$180.00 set forth in § 1.17(p) is included herein; or

☐ Applicant submits that each item of information contained in this IDS was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.

☐ **Under 37 C.F.R. § 1.97(d):** Pursuant to 37 C.F.R. §§ 1.56 and 1.97(d), Applicant brings to the attention of the Examiner the documents listed on the attached PTO Form 1449. This IDS is being filed after the events recited in § 1.97(c) but before payment of the issue fee.

☐ The fee of \$180.00 set forth in § 1.17(p) is included herein; and

☐ Applicant submits that each item of information contained in this IDS was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.

☒ A search report or other listing of documents from a counterpart, related, or other application dated August 24, 2004, and having documents cited thereon is attached for the Examiner's consideration. Any of these documents not previously cited, and any additional documents are listed on the PTO Form 1449.

☒ Applicant respectfully requests that the Examiner consider the listed documents and evidence that consideration by making appropriate notations on the attached form. As for any document listed on the accompanying PTO-1449 that is in a language other than English, relevance can be understood from an enclosed English abstract or at least partial translation or from mention in the specification or in a search report for a corresponding application.

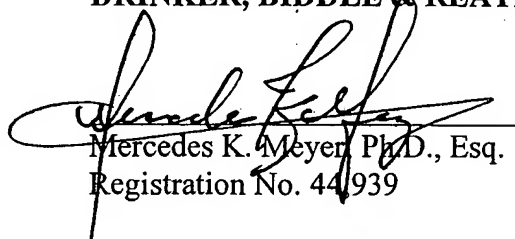
This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that any of the listed documents are material or constitute "prior art." If it should be determined that any of the listed documents do not constitute "prior art" under United States law, Applicant reserve the right to present to the Office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should any of the documents be applied against the claims of the present application.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this Application, including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required and including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573. This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

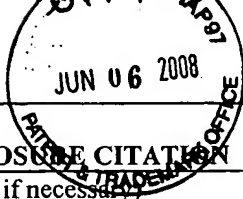
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<b>INFORMATION DISCLOSURE CITATION</b> (Use several sheets if necessary)	Attorney Docket No.: 47237-5005-00-US	Serial No.: 10/550,711
	Applicants Kengo AKIMOTO et al.	Page 1 of 1
PTO Form 1449	Filing Date: September 26, 2005	Group Art Unit: 1621

**U.S. PATENT DOCUMENTS**

*Examiner Initial	Document Number	Date	Name	Class	Sub Class	Filing Date

**FOREIGN PATENT DOCUMENTS**

	Document Number	Date	Country	Class	Sub Class	Translation	
						YES	NO
	EP-1 419 768 A1	05/19/2004	EP				

**OTHER DOCUMENTS**

(Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.) date, page(s), volume-issue number(s), publisher, city and/or country where published.)

	International Search Report dated August 24, 2004, issued in PCT/JP2004/004282 filed March 26, 2004
	Office Action issued by the European Patent Office in EP Application No. 04 723 750.8 – 1221 dated September 14, 2007
Examiner	Date Considered

Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.